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Technical assistance and capacity-building

Report of the independent expert on the situation of human rights in Mali, Suliman Baldo

Summary

Pursuant to Human Rights Council resolution 22/18, the present report gives an account of the independent expert's first visit to Mali from 20 October to 3 November 2013. Covering the period from 1 July to 30 December 2013, it examines the political and security situation as well as the institutional reforms undertaken by Mali since the end of the severe crisis triggered in January 2012 by the occupation of the north of the country by armed groups and the return to constitutional order.

The independent expert also reports on human rights violations in the country, including summary executions, enforced disappearances, rapes, looting, arbitrary arrests and detentions, torture and cruel, inhuman or degrading treatment perpetrated by the Malian armed forces and armed groups in the country.

Despite the complex causes of the conflict between the Government and the armed groups of the north and the mistrust arising from a number of historical episodes of the conflict, the protagonists have demonstrated the political will to find lasting solutions to the multidimensional crisis that has shaken Mali. The Malian stakeholders must persevere in seeking negotiated solutions to their internal problems of governance while urging their neighbours in the Sahel and in the Arab Maghreb as well as the international community to take seriously the problems of transnational crime and terrorism that threaten to destabilize both Mali and the States of the region.

The recent crisis has revealed the underlying causes that almost led to the collapse of the State: years of deteriorating public institutions, including those that govern the rule of law, which allowed corruption to become generalized and impunity to take root. In addition to judicial prosecution of the perpetrators of the most serious crimes and abuse committed in the course of the last crisis, consolidation of peace in Mali will require reforms of the justice and security sectors, efforts to combat the endemic corruption of civil servants brought about by international trafficking and the criminalization of the economy of the north, as well as other institutional reforms.

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From the point of view of security, the international military campaign and the Malian armed forces have succeeded in dispersing the armed groups and jihadis, but not in eliminating them entirely. The latter have reorganized and, scarcely one month after the presidential elections, they have launched attacks against military and civilian targets in the north. Tensions between the Malian armed forces and the armed groups in the north, although signatories of a preliminary peace agreement with the Government, have also given rise to deadly clashes. The independent expert notes the destabilizing impact of terrorist attacks and the resumption of military operations on the situation of human rights and the restoration of State authority in the north. He calls on Mali to speed up the negotiation of an equitable, credible programme for the reform of the security sector, disarmament and the social reintegration of former combatants.

Malian justice took an important step towards the restoration of the rule of law and recognition of the rights of victims and their families by opening independent investigations and legal proceedings in the cases of enforced disappearances and other serious human rights violations that took place at the Kati military barracks in April–May 2012 and September–October 2013. The independent expert calls on Mali to protect the independence of its judiciary and to provide it with the material, technical and logistic means — which are seriously lacking — to conduct thorough investigations into the crimes committed by armed groups and Malian armed forces during the crisis in the north. The Government of Mali should mobilize the resources needed to ensure tight security for members of the criminal justice system responsible for trying sensitive cases concerning international crimes, impunity or corruption of high civil or military officials and international terrorism.

The independent expert notes the decision of the Government of Mali to restructure the Dialogue and Reconciliation Commission so as to enlarge its mandate and incorporate the components of truth and justice. All these principles are necessary to enable the Malians to confront a past marked by the socioeconomic and cultural marginalization of certain regions and communities in the country, which is one of the world's poorest.

The historical grievances of certain population groups in the north having led to repeated armed rebellions followed by at times collective reprisals, the mechanisms of transitional justice are best able — if the new Truth, Justice and Reconciliation Commission fulfils its mandate — to help the Malians address past injustices and to recognize the rights of the victims to justice, reparation and guarantees of non-recurrence.

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I. Introduction

1. The present report has been submitted in conformity with Human Rights Council resolution 22/18 of 21 March 2013, pursuant to which the Council established a one-year mandate for an independent expert on the situation of human rights in Mali and requested him to report to the Human Rights Council at its twenty-fifth session.

2. The present report covers the period between 1 July 2013 and 30 December 2013 and gives an account of the independent expert's first visit to Mali from 20 October to 3 November 2013. It is based on information collected from governmental and religious authorities, United Nations specialized agencies, and national and international non-governmental human rights organizations, as well as witnesses and victims of human rights violations.

3. The independent expert expresses appreciation to the Government of Mali, which facilitated his stay in the country and his meetings with national and local authorities. He met with the highest authorities of the country. The independent expert is grateful to the President of Mali, Mr. Ibrahim Boubacar Keita, for having taken the time to share with him his vision of the promotion and protection of human rights in Mali.

4. The independent expert also met with the Prime Minister, the Minister of Justice, the Minister for the National Reconciliation and Development of the Regions of the North, the Minister for Foreign Affairs and International Cooperation, the Minister of Security, the Minister for Territorial Administration, the Minister of Labour and Social and Humanitarian Affairs, the Minister of Education and the Minister of Health and Hygiene.

5. In addition, the independent expert met with the Public Prosecutor, the Chief of Staff of the Armed Forces of Mali, the President of the Dialogue and Reconciliation Commission, the Chairperson of the National Human Rights Commission and representatives of civil society, religious leaders, political parties, armed groups and the diplomatic corps as well as representatives of the Economic Community of West African States (ECOWAS), the African Union and United Nations specialized agencies. He also visited the north of the country, in particular the regions of Kidal and Timbuktu.

6. The independent expert spoke with many witnesses and victims of human rights violations, both in Bamako and in the north of the country, and visited places of detention in Bamako, where alleged members of jihadi groups and elements of the Malian armed forces involved in the mutiny of 30 September 2013 are detained. He also met with a delegation of Malian refugees living in Mauritania.

7. The independent expert thanks in particular Albert Gerard Koenders, Special Representative of the United Nations Secretary-General for Mali and Head of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), Abdoulaye Bathily, his deputy for political affairs, and the staff of the Human Rights Division of MINUSMA in Bamako, Timbuktu and Kidal. The first visit to Mali would not have been a success without the technical, logistical and security-related support of the United Nations system in Mali.

II. General situation in the country

A. The challenge of the return to constitutional order

8. Mali is gradually emerging from a severe, multidimensional crisis which led to the collapse of the State, with considerable political, economic, security-related, humanitarian,

social and cultural consequences. The epicentre of the crisis is in the north of the country, where for many years the weak State presence has made possible the emergence of a whole range of criminal enterprises, drug trafficking and smuggling of migrants to Europe, lucrative abductions for ransom, and the illegal circulation of weapons and goods of various kinds from neighbouring countries.

9. It was in that environment that on 17 January 2012, armed groups such as the National Movement for the Liberation of Azawad (MNLA), the Ansar Dine, Al-Qaida in the Islamic Maghreb (AQMI) and the Movement for Unity and Jihad in West Africa (MUJAO) occupied the north of the country, a development which was accompanied by serious violations of human rights and international humanitarian law as well as major population displacements from the north to other regions in Mali or to neighbouring countries.

10. On 21 March 2012, a mutiny at the Kati military barracks led to the overthrow of the regime of General Amadou Toumani Touré, although he was at the end of his term of office. A group of non-commissioned officers led by Captain Amadou Haya Sanogo suspended the constitutional order and the democratic process in the country. This situation divided the political class and civil society, undermined the country's economy and fragmented the defence and security forces. In April–May 2012, violent clashes broke out in Bamako between the “red berets” and the “green berets” of the Malian army, resulting in several persons killed, wounded or missing. The red berets, supporters of Captain Amadou Haya Sanogo, suspected the red berets, loyal to General Amadou Toumani Touré, of fomenting a counter-coup against the military junta.

11. The framework agreement of 6 April 2012, signed under the auspices of ECOWAS, resulted in the establishment of transitional institutions under interim President Dioncounda Traoré. After a brief period in power, the military junta withdrew to Kati barracks, near Bamako, while retaining considerable influence in the Transition Government and the defence and security forces. The intervention of the French army in January 2013 in Operation Serval, in support of African troops, halted the offensive of armed jihadi groups towards the south and liberated localities in the north of the country.

12. On 18 June 2013, the Transition Government and the armed groups of northern Mali (MNLA, the Supreme Council for the Unity of Azawad (HCUA), the Arab Movement of Azawad and the Patriotic Forces of Resistance) signed a preliminary agreement in Ouagadougou on presidential elections and inclusive peace negotiations in Mali, and presidential elections were held on 28 July and 11 August 2013 throughout the country. The elections were an essential step towards resolving the crisis in Mali, restoring constitutional order and strengthening the legitimacy of the State. Despite many challenges associated with a tight election schedule and a fragile security context, the elections were held in satisfactory conditions and in a peaceful climate, and with an exceptional level of participation of 48 per cent. On 12 August 2013, Soumaïla Cissé conceded defeat and went to the home of President-Elect Ibrahim Boubacar Keïta to congratulate him.

13. In his inaugural address, the President of Mali declared that a settlement of the problem of the north continued to be the most pressing priority. As soon as it was established on 8 September 2013, the new Government adopted a number of measures to promote inter- and intra-communal dialogue and engage with the armed groups and other actors in the crisis in the north, including through the organization in Bamako of national consultations on decentralization from 21 to 23 October 2013 and a national conference on the north from 1 to 3 November 2013.

14. The electoral process was completed with the holding of legislative elections on 24 November and 15 December 2013. Approximately 6.5 million voters were called upon to vote in order to build on efforts to restore the constitutional order and State institutions.

According to the provisional official results of the second round, announced on Tuesday 17 December by the Minister for Territorial Administration, the presidential party, the Rassemblement pour le Mali (RPM), and its allies had an absolute majority.

B. The security challenge in the north

15. Scarcely a month and a half after the presidential election, the armed groups reorganized and resumed their destabilizing activities with a series of attacks aimed at military and civilian targets. Clashes between MNLA and the Malian armed forces also resumed, with at least five incidents in September alone, resulting in the deaths of 18 MNLA and Malian army combatants. No civilian victims were reported. Another major incident took place on 8 November 2013 in the village of Egazargane, in the Gao region, resulting in the deaths of three MNLA members and three wounded.

16. The threat of improvised explosive devices remains high, with five incidents reported in July 2013. Two such devices were found and defused on 27 and 29 July near the village of Aguelhok, north of Kidal, by French soldiers of Operation Serval.

17. The independent expert travelled to Kidal on 26 October 2013 and met there with MINUSMA, MNLA and HCUA, as well as organizations of civil society, having previously held a working meeting in Bamako with the Governor of Kidal, who was there in connection with his participation in the national consultations on decentralization. At the time of the independent expert's visit, the situation in Kidal, where Tuareg rebellions have broken out repeatedly since independence, remained fragile and was characterized by a weak State presence and limited State control over the region.

18. MNLA continued to occupy the governorate and most of the public buildings in the town. It also controlled the regional stations of the Mali Radio and Broadcasting Office, which it regularly used to disseminate messages fomenting hatred and violence.

19. On 14 November 2013, the restitution by MNLA of the governorate of Kidal, the official residence of the Governor and Kidal's ORTM radio station appeared to indicate a willingness of the groups involved to find peaceful solutions for the restoration of State authority. However, MNLA and HCUA still occupy other State buildings, including the regional assembly, the youth centre and the prison.

20. On 14 December 2013, a vehicle loaded with explosives was used to launch an attack on a MINUSMA troop transport vehicle parked in front of the bank of Kidal. The car transporting the assailants reportedly crashed into the MINUSMA vehicle, which had stopped to relieve the guards of the bank's outer perimeter; soldiers of the Malian army were guarding the inner perimeter. The toll was two dead and three wounded MINUSMA soldiers and three wounded Malian soldiers. The bank and a school across from the bank sustained heavy damage.

21. On the evening of 16 December 2013, three explosions were heard in the vicinity of the MINUSMA base at Kidal. According to reports, artillery or mortar shells were fired at positions held by MINUSMA peacekeepers and landed nearby, without harming MINUSMA personnel or damaging MINUSMA equipment.

C. The challenge of the restoration of State authority

22. The independent expert found that during the occupation of the north by armed groups, the authority of the State had weakened considerably in the regions of Kidal, Gao and Timbuktu, as well as in part of the regions of Mopti and Ségou. Despite the liberation

of a large part of the north, the Malian State has not yet been able to recover control over the entire territory.

23. It is still difficult for government authorities to travel to the region of Kidal on official visit. In mid-September 2013, the convoy of a delegation of members of the Government of Mali was attacked by stone-throwing demonstrators – MNLA sympathizers demanding independence for Azawad. On 28 November, an airplane transporting the Prime Minister was unable to land in Kidal because of demonstrators at the airport protesting his visit in the region.

24. In the north, the consequence of the occupation has been the systematic destruction of all State presence. State functions such as the territorial administration, security, justice, education and health care were particularly hard hit, since they were strategic targets for jihadi groups seeking to replace the judicial order by the sharia. Many public service buildings and infrastructures were destroyed. The civil servants and State officials assigned to the north fled to Bamako.

25. The independent expert noted that the Malian authorities were gradually reintroducing institutions in the north for security and public order, justice, public health and education, notwithstanding problems encountered in the rehabilitation and reconstruction of administrative infrastructure and other public service buildings destroyed during the occupation. The authorities were planning to reinforce the presence of police and gendarmerie stations in the north. One of the main focal points is the establishment of a fully operational prison system based on new integrated units designed to provide support for the judicial system and the security sector.

26. The authorities have also introduced incentives to encourage civil servants to return to their posts in the north. However, those who have been able to do so encounter many obstacles on the ground which impede the resumption of State services, such as the lack of basic computer infrastructures and equipment or functioning offices. The authorities also aim to ensure public order and security by opening police stations and prisons.

D. The challenge of the fight against impunity

1. Judicial mechanisms

27. The Transition Government has had mixed results and an ambivalent attitude towards combating impunity. On the one hand, it has filed an application with the International Criminal Court to bring to justice suspected perpetrators of international crimes committed in the north. On the other hand, a Council of Ministers decision of 14 August 2013 went in the opposite direction by exceptionally promoting Captain Amadou Haya Sanogo to the rank of lieutenant general, despite a number of reports of his involvement in human rights violations since the coup of 22 March 2012.

28. Moreover, the Ouagadougou Preliminary Agreement provides that the parties undertake to adopt appropriate confidence-building measures to facilitate the implementation of the Agreement, and to release the persons detained in connection with the armed conflict. On 29 October, the Government released 11 members of armed groups detained in connection with the events in the north, and it annulled arrest warrants issued against a number of Tuareg rebel chiefs, including 4 former members of parliament affiliated with MNLA and HCUA.

29. The independent expert noted with concern that such a measure opens the door to granting impunity and constituted a de facto amnesty for acts committed by armed groups in northern Mali that might potentially be considered international crimes.

30. Despite these challenges, the independent expert found during his visit to Mali that the fight against impunity had been stepped up considerably in the context of the mutiny of 30 September 2013 at the Kati military barracks by elements of the junta hostile to General Sanogo. That incident had enabled the new authorities of the country to restore State authority over the Kati barracks, which had become the headquarters of the junta since the coup of 22 March 2012, and thus to weaken General Sanogo.

31. On 31 October 2013, the judge investigating the enforced disappearances of 23 soldiers following the counter-coup of 30 April 2012 issued arrest warrants against 17 members of the armed forces, including General Sanogo. On 27 November 2013, General Sanogo was arrested and brought before the investigating judge, who indicted him and ordered him to be placed in detention.

32. In a communiqué of 6 December 2013, the Government of Mali informed national and international public opinion that on the night of 3 to 4 December 2013, the investigating judge of the second chamber of the court of first instance of Commune III (Bamako District), with the assistance of the forensic experts of the national gendarmerie's judicial investigation service, and in the presence of the public prosecutor of the Bamako Court of Appeals and the Minister of Justice, had proceeded to exhume 21 bodies (including some in military uniform) found in a common grave in the rural community of Diago, near Kati.

33. The independent expert met with courageous members of the judicial system who, mindful of their responsibilities, were determined to avail themselves of all institutional resources at their disposal to help advance the fight against impunity, a prerequisite to lasting peace and true reconciliation in Mali. That attitude resulted in some of them receiving death threats or threats of abduction in the context of sensitive cases and proceedings to which they had been assigned.

34. Despite considerable progress made in investigating the serious crimes with which the junta is charged, Malian courts, handicapped by the lack of resources and protection, have made little headway in their inquiries into crimes attributed to armed and jihadi groups since the beginning of the crisis in January 2012. For the same reasons, the courts have not followed up credible reports by witnesses and victims of ill-treatment or torture or cases of enforced disappearances of persons detained by Malian armed forces during the conflict in the north. As long as this situation is not remedied, it will continue to be a serious obstacle to the fight against impunity in Mali.

35. The independent expert has also noted that the judicial system does not have the capacity or resources to deal with the diversity and complexity of crimes committed in northern Mali, which include international crimes such as crimes against humanity, terrorism, abductions and drug trafficking. Generally speaking, the judicial system faces a number of challenges that limit its ability to function. These include inadequate financial and material resources, the insufficient independence of the judiciary, corruption, high legal costs, the remoteness of the courts, inadequate training and the lack of human rights training.

36. With regard to the procedure before the International Criminal Court, on 13 July 2012 the Transition Government, by means of a letter addressed by the Minister of Justice to the Prosecutor of the International Criminal Court, referred the most serious crimes committed in northern Mali since January 2012 to the Court. On 16 January 2013, the Prosecutor of the International Criminal Court announced his decision to initiate an investigation and to prosecute all crimes under the jurisdiction of the Court committed on Malian territory since January 2012.

2. Non-judicial mechanisms

37. On 6 March 2013, the Transition Government established a Dialogue and Reconciliation Commission with a two-year mandate to identify the political and social forces concerned by the dialogue and reconciliation process as well as armed groups eligible to participate in that dialogue in conformity with the roadmap for the transition, register cases of human rights violations committed in Mali between the commencement of hostilities and the complete recovery of control over the country, and propose any measures likely to help the victims overcome their traumatic experiences.

38. Many persons who met with the independent expert expressed reservations about the procedure for the establishment and composition of the Dialogue and Reconciliation Commission. The procedure was criticized for being carried out unilaterally, without the participation of civil society or the victims of human rights violations and without a request for the technical assistance of partners such as the Office of the United Nations High Commissioner for Human Rights, despite the Office's presence in Mali and its recognized expertise in the field.

39. The independent expert is pleased to note that the new Government has become aware of the importance of reforming the Dialogue and Reconciliation Commission, and he welcomes the efforts by the Malian authorities to give the Commission fresh impetus. The Ministry for the National Reconciliation and Development of the Regions of the North has been mandated to define and implement a strategy of coexistence based on equity and justice. In the course of the meeting with the authorities, the independent expert drew their attention to the need for the Commission to put greater focus on the truth dimension, to place the victims at the centre of the process and to adopt a participatory approach in order to enhance the new Commission's legitimacy.

40. On 13 December 2013, the Council of Ministers restructured the Commission, adopting bills for the establishment, organization and functioning of the Truth, Justice and Reconciliation Commission. According to the communiqué of the Council of Ministers of 13 December, the Truth, Justice and Reconciliation Commission will take into account the dimensions of truth and justice and will contribute to establishing a lasting peace by seeking truth, reconciliation and the consolidation of democratic values.

III. The human rights situation

A. Civil and political rights

1. Human rights violations committed by the Malian armed forces

41. In the course of the period under consideration, the independent expert received reports of human rights violations, including summary executions, enforced disappearances, rapes, looting, arbitrary arrests and detentions, and torture and cruel, inhuman and degrading treatment perpetrated by the Malian armed forces against the civil population in the north, mainly members of the Arab and Tuareg communities of the regions of Kidal, Gao and Timbuktu.

42. On 30 September 2013, a mutiny broke out at the Kati military barracks, started by a dissident group belonging to the former Comité national pour le redressement de la démocratie et la restauration de l'État (National Committee for the rehabilitation of democracy and the restoration of the State), which included members of the junta. The mutineers demanded promotions and material benefits for the soldiers who had participated in the coup of 22 March 2012 as well as the revocation of General Sanogo's status. The mutineers wounded a colonel whom they had abducted and threatened with their weapons.

The men faithful to General Sanogo reacted with brutality: at least 4 soldiers were executed and 11 others are unaccounted for, including colonel Youssouf Traoré.

43. On 2 October 2013, a Tuareg member of MNLA was reportedly killed in the locality of Aguelhok by members of the Malian armed forces. According to witnesses, the incident took place when a group of Malian soldiers approached two unarmed members of MNLA and mistreated them. One of the men fled, and the other was killed by a Malian soldier. The incident caused considerable tension in Aguelhok, where other serious incidents were reported on 5 October.

44. On 28 November 2013, 5 civilian members of the Tuareg community, 2 women (aged 23 and 26) and 3 men (aged 16, 19 and 30), were critically injured during violent demonstrations organized at Kidal airport by some 300 MNLA sympathizers to protest the arrival of the Prime Minister in their region. MINUSMA troops and Malian armed forces were deployed in the area to ensure security. The demonstrators reportedly threw stones at the MINUSMA troops and the Malian armed forces that were attempting to prevent them from occupying the runway. The soldiers of the Malian armed forces reportedly opened fire on the demonstrators, critically wounding five persons. One of the victims, a woman, died of her injuries after being evacuated to Bamako.

45. The independent expert is concerned about the recent waves of arrests and arbitrary detentions by the Malian armed forces of persons belonging mostly to Tuareg, Songhai and Arab communities in northern Mali. The arrests are usually ordered following at times false accusations made by members of local militia or the population. The arrests and arbitrary detentions are having an adverse impact on the return of displaced persons and refugees to their region of origin.

46. The independent expert noted the case of a traditional Tuareg chief who earlier had fled to Burkina Faso and who was arrested on 16 November after returning to northern Mali to take part in the legislative election campaign. He was reportedly accused by the local population of collaboration with armed jihadi groups during the occupation. The detainee, who later was transferred to Bamako, denied the allegations and maintained that he had been living in Burkina Faso since February 2011. Owing to the weak presence of the judicial system in the north, it is not possible to verify such allegations expeditiously or to free the persons concerned in the absence of evidence. In fact, in many cases, persons freed by the gendarmerie after an inconclusive investigation have then been arrested by the Malian armed forces on the basis of the same allegations. This interference by the army in legal proceedings concerning civilians also gives cause for concern.

47. The independent expert has also received reports of cases of ill-treatment and abductions. For example, it was reported that on 3 November 2013 three Tuareg dignitaries of the Ifoghas community were badly beaten about the head by two members of the Malian armed forces during a patrol in Tarssek, near Kidal. One of them lost consciousness and the other fell to the ground and was unable to stand up. Cases of ill-treatment inflicted by the Malian armed forces have also been reported in a number of villages in the north.

48. On 23 July, members of the Malian armed forces who were part of a military assistance and training detachment reportedly stopped their vehicle and arrested a 28-year-old teacher of Songhai origin in Mopti. The family still has no news of the victim. The victim's mother lodged a complaint at the Mopti police station and court, but no action was taken.

49. The independent expert also received consistent reports of the exhumation in July 2013 in the vicinity of Timbuktu of the bodies of six Arab dignitaries, including an elderly man named Ali Ould Kabbad. The victims were last seen alive when they were being arrested by soldiers of the Malian armed forces.

2. Human rights violations committed by armed groups

50. Armed groups continue to be involved in serious human rights violations in northern Mali, including violations of the right to life, abductions, rapes, ill-treatment, violations of the right to own property and suicide attacks resulting in the deaths of 47 persons, including 2 peacekeepers, 2 French reporters and 1 minor as well as numerous civilians. Human rights observers have also collected information on nine cases of serious human rights violations committed by MNLA, in particular in Kidal and Timbuktu, involving 21 civilians and 1 member of the Malian armed forces. MNLA elements were also implicated in cases of arrest and arbitrary detention, torture, recruitment and employment of children, looting, extortion and intimidation.

51. At about one o'clock on the afternoon of 28 September 2013, a vehicle exploded next to the entrance to the garrison of the Fifth Military Region of Malian armed forces in Timbuktu. Three suspected jihadis were in the vehicle, which apparently was heavily loaded with explosives. Travelling at high speed, the vehicle crashed into a military building adjoining the garrison's checkpoint and blew up. The preliminary toll was five persons killed – the three suspected jihadis and two civilian passers-by. AQMI claimed responsibility for the attack.

52. On 7 October, six shells were fired at the town of Gao, seriously injuring one Malian soldier. MUJAO claimed responsibility for the attack. That same day, a bridge near the locality of Ansongo was damaged by an improvised explosive device. On 23 October, four persons blew up their vehicle, which was filled with explosives, at a roadside checkpoint of MINUSMA peacekeepers in Tessalit, resulting in the deaths of seven persons, including two MINUSMA soldiers from Chad and a 6-year-old child. On 1 November, violent demonstrations were held in Gao and Menaka to protest the lack of basic services such as access to water, electricity and the courts as well as the deterioration of security conditions and the economic situation.

53. The illegal circulation of firearms in the town of Kidal seems to have had an impact on the security of civilians. On 24 October, a 35-year-old man, a member of MNLA, was reportedly murdered in his home in the Abeibara Cercle, 50 kilometres from Kidal, by three armed members of AQMI who came on motorcycles. Two days later, an Arab truck driver was reportedly killed in similar circumstances by armed men on motorcycles. The incident took place on the Anefis road, approximately 110 kilometres from Kidal. The three surviving passengers reported the incident to the Kidal gendarmerie.

54. On 2 November, two French reporters working for Radio France international were abducted and murdered by four armed men in the Kidal region. Their bodies were found some 15 kilometres from Kidal, on the Tin-Essako road. This serious incident constitutes the ultimate obstacle to freedom of expression, including freedom to inform and the right of access to information.

55. On 4 November, four civilians, including a woman and a child, were killed when the transport vehicle in which they were riding hit an improvised explosive device approximately 110 kilometres west of Menaka, in the Gao region. On 26 November 2013, three members of the Tuareg community were reportedly abducted in Kidal and two of them executed by members of AQMI between Talahandak and Borhassa, 285 kilometres north of Kidal, near the Algerian border. The bodies of the two victims, aged 25 and 29, who were members of the Ifoghas community, were found by the local population and turned over to members of their families. The third victim is still unaccounted for.

56. The independent expert also received reports about the murder of a traditional chief in Gourma Rharous, in the Timbuktu region. The incident occurred on 28 November 2013, when two armed men forced their way into a Tuareg camp and reportedly fired two shots, killing the head of the Tinaliderene community, 65 kilometres northeast of Ouinarden

(Gossi Commune). In another incident in the Timbuktu region, 20 kilometres north of Gossi, a Fulani businessman was reportedly abducted and murdered on 2 December 2013. His house was looted before he was killed.

B. Inter- and intra-communal clashes

57. The independent expert is particularly concerned about recent waves of violence between ethnic and racial communities in northern Mali, notably between Arabs, Fulani, Tuaregs and Songhai, which have resulted in loss of life in each of those communities. Six serious clashes were reported during the period covered by this report in Kidal, Gao and Timbuktu, with a death toll of at least 20 persons. The clashes are exacerbated by criminal activities, raids, drug and human trafficking and the circulation of firearms, all of which fuel conflicts.

58. One of the most worrisome aspects of these clashes is the failure to distinguish between members of each community, who are no longer perceived as individuals responsible for their own acts. In such situations, there is a very high risk of serious human rights violations, because acts by individuals are attributed to an entire community, whose members are then in danger of being targeted, not for acts that they are suspected of committing, but for being members of that community.

59. One emblematic case of such inter-communal violence occurred on 31 October 2013 in the village of Ekawayane, which is located in the Aljounoub Commune in the Timbuktu region. It involved a punitive expedition following the alleged murder of a young Tuareg on 30 October 2013 by an Arab in the village of Tilemsi, about 190 kilometres from Goundam. Young armed Tuaregs reportedly attacked the village of Ekawayane, which is mainly inhabited by Arabs. Two Arabs, including the head of the village, were reported to have been killed. Six other Arabs were reportedly abducted by MNLA elements in Tilemsi on 30 October for their alleged involvement in the death of the Tuareg. There is no information on the fate of these persons.

60. There have also been clashes within the Tuareg community, between Ifoghas and Idnans, in particular in Tin-Essako, Talahandak and Tinzahouatene, causing insecurity and leading on 27 November 2013 to the abduction and summary execution of two persons. Both communities are affiliated with MNLA, but do not agree on whether the movement should be secular or Islamic in nature.

61. The independent expert notes with concern that Tuareg society is composed of clans and a confederation of clans with a rigid hierarchical structure that ensures that the Bellas, dark-skinned Tuaregs still regarded as slaves and who are denied their inherent human rights and dignity, are kept at the bottom of the social scale. That hierarchical structure also has a generational dimension, since MNLA appears to be composed chiefly of young people determined to overthrow the established order in their community and impose social mobility by force of arms.

62. These internal dynamics of Tuareg society lead to competition between clans for power in the region. The absence of a strong presence of the Malian State in the north has accelerated and radicalized these intra-communal tensions, which have flared up periodically in Malian society since independence in the form of armed rebellion. This has a destabilizing effect on the entire country. At the same time, some Tuareg soldiers in Mali's defence and security forces do not hesitate to use the army and their position in the armed forces to enhance the power of their clan within their community and thus settle accounts, sometimes to the detriment of human rights.

C. Violence against women

63. During the occupation of northern Mali in January 2012, armed groups committed sexual violence, including rape, gang rape, sexual slavery and forced marriage. These conflict-related acts reflect the poor status of women in Malian society and the heritage of slavery. Women and girls of the Bella community, who are regarded as descendants of the slaves of Tuaregs, have often been targeted by rebel groups. In another case, which is expected to be the subject of investigations and prosecutions, members of the “green berets” are accused of raping dozens of spouses and daughters of “red berets” during the attempted counter-coup as a form of reprisal.

64. Allegations of sexual violence have declined significantly since the liberation of northern Mali. The deterioration of the security situation seems to have been an important factor in many cases of sexual violence reported in the north, in particular in Gao and the vicinity, the perpetrators of which are usually members of armed groups.

65. The victims are often minors who are attacked at the home of their parents. In other cases, women were singled out by armed men who attacked the bus in which they were travelling. For example, in the Timbuktu region, five women were raped by armed men in civilian clothing. One victim reported that at around 4 o'clock on the afternoon of 2 November 2013, she was on board a bus on the road between Tonka and Bouna, in the Timbuktu region, in the company of four other women, the driver and an elderly person, when two white vans suddenly appeared with eight armed men on board who ordered the driver to stop, forced the five women to leave the vehicle and raped them for 5 hours. One of the victims told investigators that she had been raped several times by three men who spoke Songhai, Arabic and Tamasheq.

66. Another typical case concerns a 21-year-old woman detained in a rape case since 28 February 2011 in Djenné prison (Mopti region) who claims to have been the victim of repeated physical and sexual violence since March 2013. The victim alleges that when she complained to the prison director after the first rape, he told her to take contraceptive measures. She also contends that she was forced to perform domestic work in the prison and that her earnings were extorted by prison guards and the prison director.

67. On 1 December 2013, three women were abducted and raped during an attack on the Inamoussa of Bozo, a village 44 kilometres north of Gossi (Timbuktu region). The attack was reportedly carried out by a group of armed men identified by the victims as being Tuaregs. There was widespread looting of property during the attack, which caused a panic in the village and led to the closing of schools.

68. The independent expert is concerned about the impunity still enjoyed by the alleged perpetrators of sexual violence in Mali. The victims invariably encounter numerous obstacles to taking their cases to court, in particular in the north, where there is a minimal presence of judicial authorities and a fragile security situation. Many victims and organizations of civil society have reported their frustration about the failure to prosecute known cases of rape, a circumstance which may impede endeavours to achieve national reconciliation. Government efforts, supported by the United Nations, to enhance the capacity of the security forces and ex-combatants to prevent sexual violence and protect women and girls must be conducted in the framework of a global strategy that focuses on the victims, provides for reparation and guarantees non-recurrence of such acts.

D. The situation of children

69. Children are one of the biggest categories of victims of the Malian crisis. The resurgence of violence and the insecurity in the north greatly increased the risk of abuse and

violation of children's rights. Although in many respects the protection of children's rights gave cause for concern even before the crisis, the occupation of the north by armed groups led to a serious deterioration in the situation of children, as well as to new serious problems, such as separation from parents, displacement, recruitment by armed groups, ideological and religious indoctrination, violence, including sexual violence, and the risk of violation of the right to life.

70. Many of the victims of recent attacks by armed groups in the north, in particular in Tessalit, Kidal, Timbuktu and Gao, were children. Numerous cases of sexual violence against children were reported, mainly in northern Mali. The United Nations Children's Fund (UNICEF) reported 767 children separated from their parents and 77 children injured by explosives abandoned during military clashes, sometimes in schools.

71. The recruitment of children by armed groups has resulted in a considerable number of arrests of minors since the beginning of the crisis. The independent expert welcomes the signing by the Government and the Special Representative of the United Nations Secretary-General, on 1 July 2013, of the protocol for the release, transfer and protection of children associated with armed forces and groups. A request has been made to the authorities to examine the case of children arrested prior to the signing of the protocol. Ten children associated with armed groups are still in detention, including five adolescents detained at Gendarmerie Camp 1, in Bamako.

72. In October 2013, five children associated with armed groups were returned to their families after spending time in transit centres supported by UNICEF until their parents were found.

E. Prison conditions

73. The independent expert has closely followed the cases of persons, usually members of the Tuareg and Arab communities, arrested in the context of the crisis in northern Mali by Malian armed forces. He visited the places of detention where these persons are held, including the Bamako central prison and the Gendarmerie Camp 1 detention centre in Bamako. The Human Rights Division of MINUSMA also regularly visits detainees around the country to gather information on detention conditions and on the progress of the legal proceedings instituted against them.

74. As of 2 December 2013, the Human Rights Division, through its regular visits to detention centres in the country, had registered the names of 400 persons arrested since 2012 in connection with the conflict in northern Mali. Human rights teams collected information enabling them to determine the situation of 332 persons: 138 had been released, 185 were detained in Bamako, 3 were detained in Gao and 6 had died in detention; it had not been possible to establish the whereabouts of 68 detainees.

75. Of the 138 released detainees, 3 received a presidential pardon. The period between September and October 2013 witnessed the largest number of releases of detainees, both by the Malian authorities and MNLA. All told, the Malian authorities released 93 detainees, and MNLA released 30 detainees from various detention centres in Kidal.

76. The independent expert is closely following the release of members of armed groups in the context of the implementation of the Ouagadougou Preliminary Agreement signed in June 2013. MNLA and HCUA communicated to the mediator a list of 120 names of their members and sympathizers to be released in order to facilitate the peace negotiations. As of 2 December 2013, 38 persons on that list had been released; 1 of the persons concerned by those measures had died in prison.

77. The independent expert regrets that he did not receive authorization to visit the detention centres of the State security intelligence agency, despite numerous requests. He notes with concern that no organization has been able to obtain access to the persons detained in State security facilities, despite many allegations that torture is practised there. The independent expert and the human rights teams of MINUSMA were able to meet with eight detainees who had been held by the State security and who alleged that they had been tortured and subjected to other ill-treatment during interrogations. For example, it was reported that one person had had his ear pierced with a pen and had been severely beaten during interrogation. The detainees met with also asserted that the State security had torture facilities, including a “punishment room”, in which an electric chair and other torture equipment were used.

78. Many detainees who were members of armed groups stated that they had been subjected to torture and ill-treatment by the Malian armed forces after their arrest in the north. Those acts ceased once they were transferred to the gendarmerie in the north and, later, to Bamako.

79. The independent expert is deeply concerned about problems of hygiene and cleanliness in many prisons and places of detention, as was evident during his visit to Bamako central prison, and about the lack of regular medical care for detainees.

F. Refugees and internally displaced persons

80. Since 2012 the armed conflict in northern Mali has displaced 424,000 persons: 255,000 persons were internally displaced, and 168,000 persons (as of 30 November 2013) fled to Mauritania, Burkina Faso and Niger. The Government has undertaken to encourage refugees and displaced persons to return to their regions of origin voluntarily in order to participate in presidential and legislative elections. A special initiative was launched between 15 and 31 October to bring returned persons to polling stations of their choice; 163,423 voters were brought to electoral districts under this measure.

81. The Government also facilitated election participation for refugees in camps. In cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP) and the International Organization for Migration (IOM), the authorities visited camps in Burkina Faso, Mauritania and Niger to arrange for refugee participation in elections. Thanks to that initiative, 19,020 refugees were able to register to vote.

82. The resurgence of violence and false accusations followed by arrests and arbitrary detentions are likely to discourage the return of refugees and internally displaced persons.

G. Economic, social and cultural rights

83. Even before the political and security crisis of January 2012, Mali had already faced a severe food crisis throughout the Sahelian band of its territory because of the poor agricultural harvest of 2011–2012. Food insecurity and the living conditions of the population worsened with the occupation of the north by armed groups.

84. The economic sanctions that followed the military coup included the suspension of development assistance by technical and financial partners and an economic and financial embargo by ECOWAS.

85. The reduced presence of State officials also poses considerable problems. Of the 176 health-care centres in the areas affected by the conflict, only 121 are open, and many schools in the north are still not operational, although the school year started on 17 October

in Timbuktu and on 1 November in Gao. To date, 85 of Timbuktu's 460 schools and 195 of Gao's 569 schools may have to remain closed for security reasons. In Kidal, no school has opened, although MNLA has expressed its intention to do so.

86. Some progress has been made with the provision of basic services thanks to efforts by the authorities and their humanitarian and development partners. However, much remains to be done to continue to meet the urgent needs of the population and help the authorities to reintroduce and ensure lasting rehabilitation of basic services and infrastructures and restore the means of subsistence of persons affected by the crisis.

87. On 27 November 2013, the Council of Ministers adopted bills on the establishment, organization and operation of a National Employment and Training Observatory. This new body is responsible for coordinating the collection, processing, storage and dissemination of information on the labour market in order to ensure a better balance between needs and possibilities. On 16 October 2013, the Council of Ministers of the new Government also adopted a draft decree regulating the collection and sale of raw diamonds in line with the Kimberley Process Certification Scheme in order to prevent the purchase of diamonds placed by rebel movements on the world market to finance their activities.

88. With regard to cultural rights, the independent expert noted that during the occupation of northern Mali by armed groups, the cultural heritage and cultural practices and expressions in Timbuktu and Gao were prime targets of systematic and generalized attacks by jihadi groups. In Timbuktu, 11 of 16 mausoleums on the list of World Heritage Sites were destroyed, as were the 2 mausoleums of the Djingareyber mosque and the El Farouk monument. The sacred door of the Sidi Yahia was broken down. Approximately 4,200 manuscripts from the Ahmed Baba Institute of Higher Learning and Islamic Research were burned by armed groups. In the Gao region, the El Kebir mausoleum was destroyed in October 2012. In Douentza, the big toguna in the centre of the town was pillaged and its sculpted pillars burned. The intangible cultural heritage was also affected by the events.

89. The independent expert welcomes the efforts being made by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and MINUSMA to establish an inventory of Mali's intangible cultural heritage and to restore and protect the country's cultural heritage. He also notes with appreciation that the cultural dimension is taken into account in the mandate of MINUSMA. Security Council resolution 2100 (2013) is the first to include the protection of cultural and historical sites in the mandate of a peacekeeping operation.

90. The independent expert noted in particular that the President of Mali had explained to him his vision of how important it was for modern human rights to be based on the solid cultural bedrock of humanism and tolerance which the Malian people, with its rich diversity, has developed over time. In that connection, the new Manden Charter, proclaimed in Kurukan Fuga at the beginning of the thirteenth century by the founder of the Mandinka Empire and inscribed in 2009 in the List of the Intangible Cultural Heritage of Humanity, is a real source of inspiration for contemporary human rights.

IV. Conclusions and recommendations

A. Conclusions

91. **The dramatic events of January and March 2012 highlighted the vulnerability of Mali, a developing country with weakened State structures, in the face of an alliance of convenience between Malian rebels and armed jihadi groups from outside the country. Although routed in early 2013 through the intervention of France and**

African forces, these groups are still in a position to conduct terrorist and guerrilla operations in the north against military and civilian targets.

92. The major challenges which Mali must address in 2014 are the consolidation of security in the north and the strengthening of constitutional order, which the country had restored with the help of presidential and legislative elections. Mali must also reinforce the rule of law and the fight against impunity and make major efforts to reform the judicial system and the security sector. A frank dialogue with the armed groups which agreed to support the Malian State and recognized its sovereignty, secular nature and the indivisibility of its territory, as well as with the communities in northern Mali, is the only way of promoting national unity and creating favourable conditions for an effective introduction of State services throughout the country.

93. In establishing the Truth, Justice and Reconciliation Commission, Mali has set out on the path to transitional justice by seeking to obtain redress, with reparation and guarantees of non-recurrence, for the victims of the massive violations of human rights and international humanitarian law committed in the north of the country since independence.

B. Recommendations

1. Recommendations for the Malian authorities

94. *Concerning the fight against impunity*, the independent expert recommends that:

(a) The technical capacities and budgetary and logistical allocations made available to members of the penal system active in the investigation and prosecution of crimes committed by members of armed groups and the Malian armed forces should be strengthened; measures should be taken to ensure that judges responsible for hearing sensitive cases are protected and that such investigations and prosecutions are conducted with due regard for international norms;

(b) Resources should be immediately allocated so that military courts can conduct investigations and prosecute members of the State security forces implicated in serious violations, including those who, on the pretext of obeying their superiors, are responsible for not having prevented or punished crimes committed before, during or after the crisis;

(c) Measures should be taken to ensure that persons placed in police custody or detained during military operations, including during rapid pretrial detention procedures, are treated humanely and guaranteed due process, in line with international norms;

(d) The deployment of the police, gendarmerie and judicial personnel in towns and villages in the north should be stepped up to enable the judicial system to resume functioning in accordance with national and international law;

(e) The reform of the judicial system should be undertaken at the same time as that of the security sector, in particular the army, the police, the gendarmerie and State security services; such reforms are needed if the Malian Government is to meet the paramount objective of combating impunity.

95. The independent expert recommends that the *Truth, Justice and Reconciliation Commission* should:

(a) Pursue an achievable and realistic set of objectives under a reasonable work plan;

(b) Ensure the participation of all stakeholders, in particular women and marginalized groups, in the peacebuilding process;

(c) Ensure the constructive integration of armed groups which have renounced armed struggle, and demonstrate its commitment to strengthening the constitutional order in Mali;

(d) Facilitate the creation of a road map for peacebuilding activities after the Commission.

96. The independent expert makes the following recommendations *concerning the fight against violence against women*:

(a) The Government of Mali should comply with its obligations under Security Council resolution 1960 (2010), in which the Security Council called upon the Member States of the United Nations to issue clear orders, through chains of command and Codes of Conduct or their equivalent, prohibiting sexual violence by members of the security forces and armed groups;

(b) The Government of Mali should examine without delay allegations of sexual violence with a view to prosecuting alleged perpetrators;

(c) The Government of Mali should appoint a person responsible for ensuring the implementation of these commitments at a high level;

(d) The Government of Mali should cooperate with the United Nations and facilitate its access in order to ensure compliance with these obligations;

(e) The Malian authorities and international partners should ensure that victims of sexual violence have access to HIV-related legal assistance and medical services as well as psychosocial rehabilitation;

(f) The Government of Mali and the Truth, Justice and Reconciliation Commission should consider the question of redress for the victims and their families through a multisectoral approach rather than the granting of purely legal compensation.

2. Recommendations for civil society

97. The independent expert recommends that civil society should:

(a) Develop advocacy strategies for transparent measures to combat impunity;

(b) Continue to conduct independent investigations into past and present human rights violations;

(c) Improve its efforts to better represent groups of victims and enable them to defend themselves.

3. Recommendations for the international community

98. The independent expert recommends that the international community should:

(a) Build the capacities of the Malian judicial system, in particular by providing it with considerable financial, technical, logistic and security-related support; this will make it possible to collect evidence of crimes committed in northern Mali by armed groups and the Malian armed forces;

(b) Assist Malian initiatives aimed at reforming the security sector;

- (c) Support the efforts of humanitarian organizations and the United Nations in the regions most affected by the recent crisis;
 - (d) Strengthen the efforts of the human rights observers of MINUSMA and the African Union aimed at identifying past and present violations and facilitating the communication to the competent authorities of abuses reported by victims;
 - (e) Better coordinate and rationalize efforts being made by Mali's regional and international partners to support Malian civil society groups;
 - (f) Provide more resources to assist the Government of Mali in combating transnational crime.
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